

ASSEMBLY BILL

No. 1822

Introduced by Assembly Member Swanson

February 11, 2010

An act to amend Sections 4600.5, 4601, 4601.3, 4601.4, 4603.1, 4605, 4606, and 4612 of, to add Section 4600.1 to, and to add Chapter 10.5 (commencing with Section 4600.1) to Division 2 of, the Business and Professions Code, and to add Section 647.15 to the Penal Code, relating to massage therapy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1822, as introduced, Swanson. Massage therapy.

Existing law, until January 1, 2016, provides for the voluntary certification of massage practitioners and massage therapists by a nonprofit Massage Therapy Organization, as defined, and imposes certain duties on that organization. Existing law, until January 1, 2016, requires an applicant for certification to be 18 years of age or older, to meet specified educational criteria, to provide specified information to the organization, to provide fingerprints for submission by the organization to the Department of Justice for state and federal criminal background checks, and to pay the fees required by the organization. Existing law requires the Department of Justice to conduct a criminal background check on every applicant and to provide to the organization fitness determinations and certain other information regarding an applicant. Existing law, until January 1, 2016, allows the organization to take certain disciplinary action against certificate holders and requires the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and

charged with, specified sex-related crimes. Existing law makes it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. Existing law prohibits a city, county, or city and county from enacting an ordinance that requires a certificate holder to obtain any other license, permit, or other authorization to engage in the practice of massage. Notwithstanding that prohibition, existing law authorizes a city, county, or city and county to adopt and enforce any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Existing law also exempts from certain local regulations sole proprietorships, as defined, and massage establishments or businesses that only employ persons who are certified.

This bill would, until January 1, 2016, require any person who administers massage for compensation to be certified by the nonprofit Massage Therapy Organization or certified, registered, or licensed by a city, county, or city and county. On and after January 1, 2016, the bill would require any person who administers massage for compensation to be certified, registered, or licensed by a city, county, or city and county, which certification, registration, or licensure would be administered and regulated by the city, county, or city and county for a specified fee, thereby imposing a state-mandated local program. The bill would also authorize a city, county, or city and county to require any person who administers massage or who owns a massage establishment or business to hold a business license or massage establishment permit or both. The bill would provide that a failure to comply with those provisions is a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

This bill would also transfer specified duties from the Massage Therapy Organization to local law enforcement agencies. The bill would require an applicant for certification by the organization to provide his or her fingerprints to the local law enforcement agency in the city, county, or city and county in which the applicant will be administering massage for submission to the Department of Justice for the requisite state and federal criminal background checks. The bill would require the Department of Justice to provide to the local law enforcement agency the fitness determination regarding the applicant, and would require the local law enforcement agency to conduct a local investigation related to the fitness of the applicant. By imposing additional duties on local

law enforcement agencies, the bill would impose a state-mandated local program. The bill would require the Department of Justice and local law enforcement agencies to charge a reasonable fee sufficient to cover those costs. The bill would require the organization to establish a standardized form for statewide use for purposes of the fingerprinting requirements.

This bill would require local law enforcement agencies to approve or disapprove applicants for certification by the organization, and would prohibit the organization from providing certification upon disapproval. The bill would allow an applicant to appeal a denial of certification, and would provide a specified procedure for that appeal. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified by a governmental entity or the Massage Therapy Organization unless that representation is true. The bill would make other conforming changes, including to those provisions that exempted from certain local regulations sole proprietorships and massage establishments or businesses that only employ persons who are certified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to clarify existing
2 law with regard to the authority of a city, county, or city and county
3 to enforce local regulations in connection with massage
4 establishments and businesses. It is further the intent of the
5 Legislature to provide greater authority to local law enforcement
6 agencies in connection with the certification of persons who
7 administer massage for compensation, and to provide for the
8 continuation of local regulation upon the inoperative date of the
9 current regulatory scheme.

SEC. 2. Section 4600.1 is added to the Business and Professions Code, to read:

4600.1. (a) Any person who administers massage for compensation shall hold at least one of the following:

(1) A certificate issued pursuant to this chapter.

(2) A certificate, registration, or license to administer massage issued by the city, county, or city and county in which the person will be administering massage.

(b) Notwithstanding subdivision (a) or any other provision of this chapter, any city, county, or city and county may require any person who administers massage for compensation, or who owns a massage establishment or business, to also hold a business license or a massage establishment permit or both.

(c) Local law enforcement may enforce any local ordinance that requires a certificate, registration, license, or permit as provided in this section.

(d) Any person who administers massage for compensation and fails to comply with the requirements specified in subdivision (a), or fails to hold a business license or a massage establishment permit in a jurisdiction that requires an additional license or permit pursuant to subdivision (b), shall be guilty of a misdemeanor pursuant to Section 647.15 of the Penal Code.

SEC. 3. Section 4600.5 of the Business and Professions Code is amended to read:

4600.5. (a) A Massage Therapy Organization, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter, *subject to the limitations imposed under Section 4601.3*. The organization may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The organization shall be governed by a board of directors made up of two representatives selected by each professional society, association, or other entity, whose membership is comprised of massage therapists and that chooses to participate in the organization. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a

1 code of ethics. The board of directors shall also include each of
2 the following persons:

3 (A) One member selected by each statewide association of
4 private postsecondary schools incorporated on or before January
5 1, 2010, whose member schools have together had at least 1,000
6 graduates in each of the previous three years from massage therapy
7 programs meeting the approval standards set forth in subdivision
8 (a) of Section 4600, except from those qualifying associations that
9 choose not to exercise this right of selection.

10 (B) One member selected by the League of California Cities,
11 unless that entity chooses not to exercise this right of selection.

12 (C) One member selected by the California State Association
13 of Counties, unless that entity chooses not to exercise this right of
14 selection.

15 (D) One member selected by the Director of Consumer Affairs,
16 unless that entity chooses not to exercise this right of selection.

17 (E) One member appointed by the California Community
18 College Chancellor's Office, unless that entity chooses not to
19 exercise this right of selection. The person appointed, if any, shall
20 not be part of any massage therapy certificate or degree program.

21 The organization's bylaws shall establish a process for appointing
22 other professional directors as determined by the board.

23 (2) The initial board of directors shall establish the organization,
24 initiate the request for tax-exempt status from the Internal Revenue
25 Service, and solicit input from the massage community concerning
26 the operations of the organization. The initial board of directors,
27 in its discretion, may immediately undertake to issue the certificates
28 authorized by this chapter after adopting the necessary bylaws or
29 other rules, or may establish by adoption of bylaws the permanent
30 governing structure prior to issuing certificates.

31 (c) The board of directors shall establish fees reasonably related
32 to the cost of providing services and carrying out its ongoing
33 responsibilities and duties. Initial and renewal fees shall be
34 established by the board of directors annually.

35 (d) The meetings of the organization shall be subject to the rules
36 of the Bagley-Keene Open ~~Meetings~~ *Meeting* Act (Article 9
37 (commencing with Section 11120) of Chapter 1 of Part 1 of
38 Division 3 of Title 2 of the Government Code).

39 SEC. 4. Section 4601 of the Business and Professions Code is
40 amended to read:

1 4601. (a) The organization shall issue a certificate under this
2 chapter to an applicant who satisfies the requirements of this
3 chapter, *subject to the limitations imposed under Section 4601.3*.

4 (b) (1) In order to obtain certification as a massage practitioner,
5 an applicant shall submit a written application and provide the
6 organization with satisfactory evidence that he or she meets all of
7 the following requirements:

8 (A) The applicant is 18 years of age or older.

9 (B) The applicant has successfully completed, at a single
10 approved school, curricula in massage and related subjects totaling
11 a minimum of 250 hours that incorporates appropriate school
12 assessment of student knowledge and skills. Included in the hours
13 shall be instruction addressing anatomy and physiology,
14 contraindications, health and hygiene, and business and ethics,
15 with at least 100 hours of the required minimum 250 hours devoted
16 to these curriculum areas.

17 (C) All fees required by the organization have been paid.

18 (2) New certificates shall not be issued pursuant to this
19 subdivision after December 31, 2015. ~~Certificates issued pursuant~~
20 ~~to this section or subdivision (a) or (c) of Section 4604 on or before~~
21 ~~December 31, 2015, shall, after December 31, 2015, be renewed~~
22 ~~without any additional educational requirements, provided that the~~
23 ~~certificate holder continues to be qualified pursuant to this chapter.~~

24 (c) In order to obtain certification as a massage therapist, an
25 applicant shall submit a written application and provide the
26 organization with satisfactory evidence that he or she meets all of
27 the following requirements:

28 (1) The applicant is 18 years of age or older.

29 (2) The applicant satisfies at least one of the following
30 requirements:

31 (A) He or she has successfully completed the curricula in
32 massage and related subjects totaling a minimum of 500 hours. Of
33 this 500 hours, a minimum of 250 hours shall be from approved
34 schools. The remaining 250 hours required may be secured either
35 from approved or registered schools, or from continuing education
36 providers approved by, or registered with, the organization or the
37 Department of Consumer Affairs. ~~After December 31, 2015,~~
38 ~~applicants may only satisfy the curricula in massage and related~~
39 ~~subjects from approved schools.~~

1 (B) The applicant has passed a massage and bodywork
2 competency assessment examination that meets generally
3 recognized psychometric principles and standards, and that is
4 approved by the board. The successful completion of this
5 examination may have been accomplished before the date the
6 organization is authorized by this chapter to begin issuing
7 certificates.

8 (3) All fees required by the organization have been paid.

9 (d) The organization shall issue a certificate to an applicant who
10 meets the other qualifications of this chapter and holds a current
11 and valid registration, certification, or license from any other state
12 whose licensure requirements meet or exceed those defined within
13 this chapter. The organization shall have discretion to give credit
14 for comparable academic work completed by an applicant in a
15 program outside of California.

16 (e) An applicant applying for a massage therapist or massage
17 practitioner certificate shall file with the organization a written
18 application provided by the organization, showing to the
19 satisfaction of the organization that he or she meets all of the
20 requirements of this chapter.

21 (f) Any certification issued under this chapter shall be subject
22 to renewal every two years in a manner prescribed by the
23 organization, and shall expire unless renewed in that manner. The
24 organization may provide for the late renewal of a ~~license~~
25 *certificate*.

26 (g) (1) The organization shall have the responsibility to
27 determine that the school or schools from which an applicant has
28 obtained the education required by this chapter meet the
29 requirements of this chapter. If the organization has any reason to
30 question whether or not the applicant received the education that
31 is required by this chapter from the school or schools that the
32 applicant is claiming, the organization shall investigate the facts
33 to determine that the applicant received the required education
34 prior to issuing a certificate.

35 (2) For purposes of paragraph (1) and any other provision of
36 this chapter for which the organization is authorized to receive
37 factual information as a condition of taking any action, the
38 organization shall have the authority to conduct oral interviews of
39 the applicant and others or to make any investigation deemed

1 necessary to establish that the information received is accurate and
2 satisfies any criteria established by this chapter.

3 SEC. 5. Section 4601.3 of the Business and Professions Code
4 is amended to read:

5 4601.3. (a) Prior to issuing a certificate to the applicant ~~or~~
6 ~~designating a custodian of records~~, the organization shall require
7 the applicant ~~or the custodian of records candidate~~ to submit to
8 *the local law enforcement agency, in the city, county, or city and*
9 *county in which the applicant will be administering massage,*
10 fingerprint images in a form consistent with the requirements of
11 this section. ~~The organization~~ *local law enforcement agency* shall
12 submit the fingerprint images and related information to the
13 Department of Justice for the purpose of obtaining information as
14 to the existence and nature of a record of state and federal level
15 convictions and of state and federal level arrests for which the
16 Department of Justice establishes that the applicant ~~or candidate~~
17 was released on bail or on his or her own recognizance pending
18 trial. Requests for federal level criminal offender record
19 information received by the Department of Justice pursuant to this
20 section shall be forwarded to the Federal Bureau of Investigation
21 by the Department of Justice. The Department of Justice shall
22 review the information returned from the Federal Bureau of
23 Investigation, and shall compile and disseminate a fitness
24 determination regarding the applicant ~~or candidate~~ to the
25 ~~organization~~ *local law enforcement agency*.

26 (b) The Department of Justice shall provide information to the
27 ~~organization~~ *local law enforcement agency* pursuant to ~~subdivision~~
28 ~~(p)~~ of Section 11105 of the Penal Code.

29 (c) The Department of Justice and the ~~organization~~ *local law*
30 *enforcement agency* shall charge a *reasonable* fee sufficient to
31 cover the cost of processing the request for state and federal level
32 criminal offender record information *and the cost of the local*
33 *investigation conducted under subdivision (e).*

34 (d) The ~~organization~~ *local law enforcement agency* shall request
35 subsequent arrest notification service from the Department of
36 Justice, as provided under Section 11105.2 of the Penal Code, for
37 all applicants for ~~license or custodian of records candidates~~
38 *certification* for whom fingerprint images and related information
39 are submitted to conduct a search for state and federal level
40 criminal offender record information.

1 ~~(e) This section shall become operative September 1, 2009.~~

2 (e) *In addition to the state and federal background checks*
3 *conducted by the Department of Justice, the local law enforcement*
4 *agency shall conduct a local investigation by compiling local arrest*
5 *records and other information related to the fitness of the*
6 *applicant.*

7 (f) *After conducting the background checks and investigation*
8 *under this section, the local law enforcement agency shall assess*
9 *the fitness of the applicant and make a determination as to whether*
10 *a certificate shall be issued to the applicant, subject also to*
11 *satisfactory qualification under Section 4601. If the local law*
12 *enforcement agency approves the applicant for certification, the*
13 *organization shall issue a certificate to the applicant, unless the*
14 *organization determines there are other grounds for disapproval,*
15 *as described in Section 4603. If the local law enforcement agency*
16 *disapproves the applicant for certification, the organization shall*
17 *not issue a certificate to that applicant, and the organization shall*
18 *ensure compliance with the procedures specified in Section 4603.1.*
19 *An applicant denied certification pursuant to this section may*
20 *appeal that denial pursuant to the procedures specified in Section*
21 *4603.1.*

22 (g) *As soon as practicable after enactment of the act adding*
23 *this subdivision, the organization shall establish a standardized*
24 *form for statewide use that describes the fingerprinting*
25 *requirements imposed under this section and what information*
26 *shall be submitted by an applicant to the local law enforcement*
27 *agency, which shall include, at a minimum, name, date of birth,*
28 *social security number, driver's license number, residence history,*
29 *employment history, criminal arrest, conviction, or abatement*
30 *history, two passport quality photographs, his or her live scan*
31 *fingerprints, the specified local law enforcement fee, and any other*
32 *information the Department of Justice needs to conduct criminal*
33 *background checks. No local law enforcement agency may require*
34 *that an applicant use any other form when submitting his or her*
35 *fingerprints pursuant to subdivision (a), unless the organization*
36 *fails to comply with this subdivision.*

37 (h) *This section applies only to the certification process*
38 *established under this chapter. This section does not affect any*
39 *procedures established by a city, county, or city and county*

1 *pursuant to paragraph (2) of subdivision (a) of or subdivision (b)*
2 *of Section 4600.1.*

3 SEC. 6. Section 4601.4 of the Business and Professions Code
4 is amended to read:

5 4601.4. Organization directors, employees, or volunteer
6 individuals may undergo ~~the~~ a background investigation process
7 ~~delineated in~~ pursuant to subdivision (p) of Section ~~4601.3~~ 11105
8 *of the Penal Code, at organizational expense.*

9 SEC. 7. Section 4603.1 of the Business and Professions Code
10 is amended to read:

11 4603.1. (a) No certificate holder or certificate applicant may
12 be disciplined or denied a certificate pursuant to Section *4601.3*
13 *or* 4603 except according to procedures satisfying the requirements
14 of this section. A denial or discipline not in accord with this section
15 or subdivision (c) of Section 4602 shall be void and without effect.

16 (b) Any certificate applicant denial or certificate holder
17 discipline shall be done in good faith and in a fair and reasonable
18 manner. Any procedure that conforms to the requirements of
19 subdivision (c) is fair and reasonable, but a court may also find
20 other procedures to be fair and reasonable when the full
21 circumstances of the certificate denial or certificate holder
22 discipline are considered.

23 (c) A procedure is fair and reasonable when the procedures in
24 subdivision (c) of Section 4602 are followed, or if all of the
25 following apply:

26 (1) The provisions of the procedure have been set forth in the
27 articles or bylaws, ~~or~~ and copies of those provisions are sent
28 annually to all ~~the members as required by the articles or bylaws~~
29 *certificate holders.*

30 (2) It provides the giving of 15 days prior notice of the certificate
31 denial or certificate holder discipline and the reasons therefor.

32 (3) It provides an opportunity for the certificate applicant or
33 certificate holder to be heard, orally or in writing, not less than
34 five days before the effective date of the certificate denial or
35 certificate holder discipline by a person or body authorized to
36 decide that the proposed certificate denial or certificate holder
37 discipline not take place.

38 (d) Any notice required under this section may be given by any
39 method reasonably calculated to provide actual notice. Any notice
40 given by mail must be given by first-class or certified mail sent to

1 the last address of the certificate applicant or certificate holder
2 shown on the organization's records.

3 (e) Any action challenging a certificate denial or certificate
4 holder discipline, including any claim alleging defective notice,
5 shall be commenced within one year after the date of the certificate
6 denial or certificate holder discipline. If the action is successful,
7 the court may order any relief, including reinstatement, that it finds
8 equitable under the circumstances.

9 (f) This section governs only the procedures for certificate denial
10 or certificate holder discipline and not the substantive grounds
11 therefor. A certificate denial or certificate holder discipline based
12 upon substantive grounds that violates contractual or other rights
13 of the member or is otherwise unlawful is not made valid by
14 compliance with this section.

15 (g) A certificate applicant or certificate holder who is denied or
16 disciplined shall be liable for any charges incurred, services or
17 benefits actually rendered, dues, assessments, or fees incurred
18 before the certificate denial or certificate holder discipline or arising
19 from contract or otherwise.

20 (h) *The organization may only grant an appeal of the denial of*
21 *a certificate under Section 4601.3 if there is clear and convincing*
22 *evidence that the certificate applicant is not a threat to the public*
23 *health and safety.*

24 SEC. 8. Section 4605 of the Business and Professions Code is
25 amended to read:

26 4605. (a) It is an unfair business practice for any person to
27 state or advertise or put out any sign or card or other device, or to
28 represent to the public through any print or electronic media, that
29 he or she is certified, registered, or licensed by a governmental
30 ~~agency~~ entity as a massage therapist or massage practitioner *unless*
31 *that representation is true pursuant to paragraph (2) of subdivision*
32 *(a) of Section 4600.1.*

33 (b) *It is an unfair business practice for any person to state or*
34 *advertise or put out any sign or card or other device, or to*
35 *represent to the public through any print or electronic media, that*
36 *he or she is certified by the organization as a massage therapist*
37 *or massage practitioner unless that representation is true pursuant*
38 *to paragraph (1) of subdivision (a) of Section 4600.1.*

39 SEC. 9. Section 4606 of the Business and Professions Code is
40 amended to read:

1 4606. It is an unfair business practice for any person to hold
2 oneself out or use the title of “certified massage therapist” or
3 “certified massage practitioner” or any other term, such as
4 “licensed,” “registered,” or “CMT,” that implies or suggests that
5 the person is certified as a massage therapist or practitioner without
6 meeting the requirements of Section 4600.1, 4601, or 4604.

7 SEC. 10. Section 4612 of the Business and Professions Code
8 is amended to read:

9 4612. (a) (1) The holder of a certificate issued pursuant to
10 this chapter shall have the right to practice massage, consistent
11 with this chapter and the qualifications established by his or her
12 certification, in any city, county, or city and county in this state
13 and shall not be required to obtain any other license, permit, or
14 other authorization, except as provided in this section *or*
15 *subdivision (b) of Section 4600.1*, to engage in that practice.

16 (2) Notwithstanding any other provision of law, a city, county,
17 or city and county shall not enact an ordinance that requires a
18 license, permit, or other authorization to practice massage by an
19 individual who is certified pursuant to this chapter and who is
20 practicing consistent with the qualifications established by his or
21 her certification, *except as provided in subdivision (b) of Section*
22 *4600.1*. No provision of any ordinance enacted by a city, county,
23 or city and county that is in effect before the effective date of this
24 chapter, and that requires a license, permit, or other authorization
25 to practice massage, may be enforced against an individual who
26 is certified pursuant to this chapter, *except as provided in*
27 *subdivisions (b) and (c) of Section 4600.1*.

28 (3) ~~Except as provided in subdivision (b), nothing~~ *Nothing* in
29 this section shall be interpreted to prevent a city, county, or city
30 and county from adopting or enforcing any local ordinance
31 governing zoning, business licensing, and reasonable health and
32 safety requirements for massage establishments or businesses.
33 ~~Subdivision (b) shall not apply to any massage establishment or~~
34 ~~business that employs or uses persons to provide massage services~~
35 ~~who are not certified pursuant to this chapter.~~

36 (b) (1) This subdivision shall apply ~~only to every massage~~
37 ~~establishments~~ *establishment* ~~or businesses that are sole~~
38 ~~proprietorships, where the sole proprietor is certified pursuant to~~
39 ~~this chapter, and to massage establishments or businesses that~~
40 ~~employ or use only persons certified pursuant to this chapter to~~

1 ~~provide massage services. For purposes of this subdivision, a sole~~
2 ~~proprietorship is a business where the owner is the only person~~
3 ~~employed by that business to provide business that provides~~
4 ~~massage services.~~

5 (2) (A) ~~Any~~ Every massage establishment or business described
6 ~~in paragraph (1)~~ shall maintain on its premises evidence for review
7 by local authorities that demonstrates that all persons providing
8 massage services are certified *or licensed*.

9 (B) Nothing in this section shall preclude a city, county, or city
10 and county from including in a local ordinance a provision that
11 requires a *massage establishment or business* ~~described in~~
12 ~~paragraph (1)~~ to file copies or provide other evidence of the
13 certificates *or licenses* held by the persons who are providing
14 massage services at the *massage establishment or business*.

15 (3) A city, county, or city and county may charge a massage
16 ~~business or establishment or business~~ a business licensing fee
17 sufficient to cover the costs of the business licensing activities
18 established by a local ordinance described in this section.

19 (4) Nothing in this section shall prohibit a city, county, or city
20 and county from adopting land use and zoning requirements
21 applicable to massage establishments or businesses, ~~provided that~~
22 ~~these requirements shall be no different than the requirements that~~
23 ~~are uniformly applied to other professional or personal services~~
24 ~~businesses.~~

25 (5) ~~Local building code or physical facility requirements~~
26 ~~applicable to massage establishments or businesses shall not require~~
27 ~~additional restroom, shower, or other facilities that are not~~
28 ~~uniformly applicable to other professional or personal service~~
29 ~~businesses, nor shall building or facility requirements be adopted~~
30 ~~that (A) require unlocked doors when there is no staff available to~~
31 ~~assure security for clients and massage staff who are behind closed~~
32 ~~doors, or (B) require windows that provide a view into massage~~
33 ~~rooms that interfere with the privacy of clients of the massage~~
34 ~~business.~~

35 (6) —
36 (5) A city, county, or city and county may adopt reasonable
37 health and safety requirements with respect to massage
38 establishments or businesses, including, but not limited to,
39 requirements for cleanliness of massage rooms, towels and linens,
40 and reasonable attire and personal hygiene requirements for persons

1 providing massage services, provided that nothing in this paragraph
2 shall be interpreted to authorize adoption of local ordinances that
3 impose additional qualifications, such as medical examinations;
4 ~~background checks~~, or other criteria; upon any person certified
5 pursuant to this chapter.

6 ~~(7)–~~

7 (6) Nothing in this section shall preclude a city, county, or city
8 and county from doing any of the following:

9 (A) Requiring an applicant for a business license to operate a
10 ~~massage business~~ or establishment *or business* to fill out an
11 application that requests the applicant to provide relevant
12 information.

13 (B) Making reasonable investigations into the information so
14 provided.

15 (C) Denying or restricting a business license if the applicant
16 has provided materially false information.

17 (c) An owner or operator of a ~~massage business~~ or establishment
18 ~~subject to subdivision (b)~~ *or business* shall be responsible for the
19 conduct of all employees or independent contractors working on
20 the premises of the business. Nothing in this section shall preclude
21 a local ordinance from authorizing suspension, revocation, or other
22 restriction of a license or permit issued to a massage establishment
23 or business if violations of this chapter, or of the local ordinance,
24 occur on the business premises.

25 (d) Nothing in this section shall preclude a city, county, or city
26 and county from adopting a local ordinance that is applicable to
27 ~~massage businesses or establishments described in paragraph (1)~~
28 ~~of subdivision (b)~~ *or businesses* and that does either of the
29 following:

30 (1) Provides that duly authorized officials of the city, county,
31 or city and county have the right to conduct reasonable inspections,
32 during regular business hours, to ensure compliance with this
33 chapter, the local ordinance, or other applicable fire and health
34 and safety requirements.

35 (2) Requires an owner or operator to notify the city, county, or
36 city and county of any intention to rename, change management,
37 or convey the *establishment* or business to another person.

38 SEC. 11. Chapter 10.5 (commencing with Section 4600.1) is
39 added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE THERAPISTS

4600.1. (a) Any person who administers massage for compensation shall hold a certificate, registration, or license to administer massage issued by the city, county, or city and county in which the person will be administering massage, which certification, registration, or licensure shall be administered and regulated by the city, county, or city and county. Every city, county, or city and county shall charge a reasonable fee sufficient to cover the cost of processing the certificates, registrations, or licenses that are required by this subdivision.

(b) Any person who holds a certificate issued by the former Massage Therapy Organization and who administers massage for compensation shall be required to comply with subdivision (a).

(c) A city, county, or city and county may require any person who administers massage for compensation, or who owns a massage establishment or business, to also hold a business license or a massage establishment permit or both.

(d) Local law enforcement may enforce any local ordinance that requires a certificate, registration, license, or permit as provided in this section.

(e) Any person who administers massage for compensation and fails to comply with the requirements specified in subdivision (a) or (b), or fails to hold a business license or massage establishment permit in a jurisdiction that requires an additional license or permit pursuant to subdivision (c), shall be guilty of a misdemeanor pursuant to Section 647.15 of the Penal Code.

4600.5. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental entity as a massage therapist or massage practitioner unless that representation is true pursuant to subdivision (a) of Section 4600.1.

4600.7. It is an unfair business practice for any person to hold oneself out or use the title of “certified massage therapist” or “certified massage practitioner” or any other term, such as “licensed,” “registered,” or “CMT,” that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4600.1.

1 4600.9. This chapter shall become operative on January 1,
2 2016.

3 SEC. 12. Section 647.15 is added to the Penal Code, to read:

4 647.15. Any person who administers massage for compensation
5 and fails to comply with the requirements specified in Section
6 4600.1 of the Business and Professions Code is guilty of a
7 misdemeanor, which is punishable by a fine of not more than ten
8 thousand dollars (\$10,000), by imprisonment in the county jail for
9 not more than one year, or by both that fine and imprisonment.

10 SEC. 13. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act or because costs that may be
15 incurred by a local agency or school district will be incurred
16 because this act creates a new crime or infraction, eliminates a
17 crime or infraction, or changes the penalty for a crime or infraction,
18 within the meaning of Section 17556 of the Government Code, or
19 changes the definition of a crime within the meaning of Section 6
20 of Article XIII B of the California Constitution.

21 SEC. 14. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 In order to ensure the public health and safety with regard to the
26 practice of massage, it is necessary that this act take effect
27 immediately.